SCOTTISH STATUTORY INSTRUMENTS

2004 No. 142

NATIONAL HEALTH SERVICE

The General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004

Made - - - -	*25th March 2004*
Laid before the Scottish Parliament - - - -	*25th March 2004*
Coming into force - -	*1st April 2004*

The Scottish Ministers in exercise of the powers conferred on them by section 7(1) and (2) of the Primary Medical Services (Scotland) Act 2004(**1**) and of all other powers enabling them in that behalf, hereby make the following Order:

PART 1

GENERAL

Citation, commencement and interpretation

1.—(1) This Order may be cited as the General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004 and shall come into force on 1st April 2004.

(2) In this Order–

"the 1978 Act" means the National Health Service (Scotland) Act 1978(**2**);

"the 1983 Act" means the Medical Act 1983(**3**);

"the 1995 Regulations" means the National Health Service (General Medical Services) (Scotland) Regulations 1995(**4**);

"the 2004 Regulations" means the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004(**5**);

"additional services" has the same meaning as in the 2004 Regulations;

(**1**) 2004 asp 1.
(**2**) 1978 c. 29.
(**3**) 1983 c. 54.
(**4**) S.I.1995/416. repealed by S.S.I. 2004/114.
(**5**) S.S.I. 2004/115.

"adjudicator" has the same meaning as in the 2004 Regulations;

"area medical committee" has the same meaning as in the 2004 Regulations;

"the Choice Regulations" means the National Health Service (Choice of Medical Practitioner) (Scotland) Regulations 1998(**6**);

"contractor" means a person with whom a Health Board enters into a contract;

"contractor's list of patients" means the list prepared and maintained by a Health Board under the term of a GMS contract which gives effect to paragraph 14 of Schedule 5 to the 2004 Regulations or under the equivalent term of a default contract or of contractual arrangements made under article 15;

"core hours" has the same meaning as in the 2004 Regulations;

"default contract" means a contract entered into under article 13 and "default contractor" shall be construed accordingly;

"essential services" has the same meaning as in the 2004 Regulations;

"global sum" has the same meaning as in the 2004 Regulations;

"GMS contract" means a contract under section 17J (Health Boards' power to enter into general medical services contracts) of the 1978 Act(**7**) and "GMS contractor" shall be construed accordingly;

"Health Board" means a Health Board constituted under section 2 of the 1978 Act(**8**) and, in relation to any time before 1st April 2004, includes a National Health Service Trust to which functions of the Health Board were delegated under section 12AA of the 1978 Act(**9**);

"immediate family member" has the same meaning as in the 2004 Regulations;

"medical list" means the list of medical practitioners undertaking to provide general medical services for persons in its area kept by a Health Board under regulations made under section 19(2)(a) (arrangements and regulations for general medical services) of the 1978 Act(**10**);

"Medical Practices Committee" means the Scottish Medical Practices Committee constituted in accordance with section 3(1) of the 1978 Act(**11**);

"Medical Register" means the registers kept under section 2 of the 1983 Act(**12**);

"National Health Service trust" has the meaning indicated by section 12A of the 1978 Act(**13**);

"NHS dispute resolution procedure" has the same meaning as in the 2004 Regulations;

"out of hours period" has the same meaning as in the 2004 Regulations;

"out of hours services" means services required to be provided in all or part of the out of hours period which–

(a) would be essential services if provided in core hours; or

(**6**) S.I. 1998/659.
(**7**) Section 17J was inserted into the 1978 Act by section 4 of the Primary Medical Services (Scotland) Act 2004 (asp 1).
(**8**) Section 2 was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 14(2) and Schedule 7, paragraph 1, the Hospital Complaints Procedure Act 1985 (c. 42), section 1(1) and the National Health Service and Community Care Act 1990 (c. 19), section 28 and Schedule 9, paragraph 19 and Schedule 10.
(**9**) Section 12AA was inserted by the Health Act 1999 (c. 8), section 47.
(**10**) Section 19(2)(a) is repealed from 1st April 2004 by the Primary Medical Services (Scotland) Act (asp 1), schedule, paragraph 1(7).
(**11**) Section 3 is repealed from 1st April 2004 by the Public Appointments and Public Bodies (Scotland) Act 2003 (asp 4), Schedule 4, paragraph 5(2).
(**12**) Section 2 was amended by S.I. 1996/1591 and 2002/3135.
(**13**) Section 12A was inserted by the National Health Service and Community Care Act 1990 (c. 19), section 31 and amended by the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, paragraph 34 and the Health Act 1999 (c. 8), sections 46 and 48 and Schedule 4, paragraph 45.

(b) are included–

(i) in a default contract as additional services funded under article 36(2); or

(ii) in a GMS contract as additional services funded under the global sum;

"practice premises" means an address specified in the contract as one at which services are to be provided under the contract;

"primary medical services performers list" has the same meaning as in the 2004 Regulations;

"registered patient" means–

(a) a person who is recorded by the Health Board as being on the contractor's list of patients; or

(b) a person whom the contractor has accepted for inclusion on its list of patients, whether or not notification of that acceptance has been received by the health Board and who has not been notified by the Health Board as having ceased to be on that list;

"relevant service in the armed forces" means whole-time service in the armed forces of the Crown in a national emergency as a volunteer or otherwise, or compulsory whole-time service in those forces, including service resulting from any reserve liability, or any equivalent service by a person liable for compulsory whole-time service in those forces;

"suspended by the Tribunal" means suspended by a direction of the Tribunal made pursuant to section 32A(2) (applications for interim suspension) or 32B(1) (suspension pending appeal), or suspended by virtue of the provisions of section 32D(1) (suspension provisions in England and Wales or in Northern Ireland) of the 1978 Act(**14**);

"temporary resident" means a person accepted by the contractor as a temporary resident under the term of a GMS contract which gives effect to paragraph 16 of Schedule 5 to the 2004 Regulations, or the equivalent term of a default contract, and for whom the contractor's responsibility has not been terminated in accordance with that term;

"vacancy" means a vacancy declared by a Health Board under regulation 11 of the 1995 Regulations(**15**);

(3) In this Order, the use of the term "it" in relation to a contractor shall be deemed to include a reference to a contractor who is an individual medical practitioner, and related expressions shall be construed accordingly.

(4) Any reference in this Order to a numbered article or Schedule or to a numbered paragraph of such an article or Schedule is, unless otherwise expressly provided, a reference to an article or Schedule bearing that number in this Order or, as the case may be, to a paragraph bearing that number in such an article or Schedule.

(**14**) Section 32A(2) was inserted by the National Health Service (Amendment) Act 1995 (c. 31) ("the 1995 Act"), section 8 and amended by the Health Act 1999 (c. 8) ("the 1999 Act"), Schedule 4, paragraph 51; section 32B(1) was inserted by the 1995 Act, section 8 and substituted by the 1999 Act, Schedule 4, paragraph 52; section 32D(1) was inserted by the 1995 Act, section 8, and amended by the 1999 Act, Schedule 4, paragraph 53 and the Community Care and Health (Scotland) Act 2002 (asp 5), Schedule 2, paragraph 2(11).

(**15**) Regulation 11 was amended by S.S.I. 1999/54.

PART 2

ENTITLEMENT TO ENTER INTO GMS CONTRACTS

Entitlement to a GMS contract

2. A Health Board must enter into a GMS contract with a person who, on 31st March 2004, is providing general medical services under section 19 of the 1978 Act (arrangements and regulations for general medical services)(**16**) in the circumstances specified in articles 3 to 12.

Entitlement to a GMS contract as an individual medical practitioner

3.—(1) This article applies to a person who, on 31st March 2004,

(a) is included in the medical list of that Health Board by virtue of regulation 4(1)(a) of the 1995 Regulations(**17**);

(b) is practising as a medical practitioner.

(2) Subject to paragraphs (4) and (7) and articles 6 and 12, a person to whom paragraph (1) applies shall, on and after 1st April 2004, be entitled to enter into a GMS contract with that Health Board as an individual medical practitioner and that Health Board must, on or after that date and if that person so wishes, enter into such a contract with that person.

(3) A person shall be regarded as practising on 31st March 2004 for the purposes of paragraph (1)(b) if that person would have been so practising on that date except for the fact that, on that date–

(a) that person is suspended from the Medical Register in the circumstances specified in paragraph (5) or suspended by the Tribunal from the Health Board's medical list; or

(b) the Health Board has in place for that person's temporary arrangements under regulation 24(7) of the 1995 Regulations(**18**).

(4) Where a person is suspended from the Medical Register in the circumstances specified in paragraph (5), or suspended by the Tribunal from the Health Board's medical list or primary medical services performers list, a Health Board shall only be required under paragraph (2) to enter into a GMS contract with that person during the period of that suspension if it is satisfied that–

(a) in the case of a suspension on grounds relating to the practitioner's physical or mental health, that practitioner is able to provide (but not perform) services under the contract;

(b) having regard to the grounds of suspension, entering into the contract would not–

(i) put at risk the safety of the contractor's patients; or

(ii) be prejudicial to the efficiency of the provision of primary medical services; and

(c) the practitioner has in place adequate arrangements for the provision of services under the contract during the period of the practitioner's suspension.

(5) The circumstances referred to in paragraphs (3)(a) and (4) are suspension–

(a) by the Committee on Professional Performance of the General Medical Council under section 36A (professional performance) or 38(1) (power to order immediate suspension after a finding of professional misconduct or unfitness to practise) of the 1983 Act or

(**16**) Section 19 was amended by the Health and Medicines Act 1980 (c. 53), section 7, the Health and Social Security Adjudications Act 1983 (c. 41), Schedule 7, paragraph 2, the Medical Act 1983 (c. 54), Schedule 5, paragraph 17, the National Health Service and Community Care Act 1990 (c. 19), section 37, the Medical (Professional Performance) Act 1995 (c. 51), schedule, paragraph 29, the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, paragraph 39 and S.I. 2002/3135. It was extended by the Health and Medicines Act 1988 (c. 49), section 17(1). It is to be repealed from 1st April 2004 by the Primary Medical Services (Scotland) Act 2004 (asp 1), schedule, paragraph 1(7).

(**17**) Regulation 4 was amended by S.I. 1996/842 and S.S.I. 1999/54.

(**18**) Regulation 24 was amended by S.I. 1995/3199, S.I. 1998/660 and S.S.I. 1999/54.

under rules made under paragraph 5A(3) of Schedule 4 (proceedings before professional conduct, health and preliminary proceedings committees) to that Act(**19**);

(b) by the Health Committee of the General Medical Council under section 37 (unfitness to practise through illness etc.)(**20**) or 38(1) of the 1983 Act; or

(c) under section 41A (interim orders) of the 1983 Act(**21**).

(6) In relation to any suspension which occurs after the coming into force of articles 13 and 14 of the Medical Act 1983 (Amendment) Order 2002(**22**), sub paragraphs (a) and (b) of paragraph (5) shall be read as if they referred to suspension by a Fitness to Practise Panel constituted under Part 3 of Schedule 1 to the 1983 Act in a case relating to deficient professional performance or adverse physical or mental health under–

(a) section 35D (functions of a fitness to practise panel) of the 1983 Act;

(b) section 38(1) (power to order immediate suspension etc after a finding of impairment of fitness to practise) of that Act; or

(c) rules made under paragraph 5A(3) of Schedule 4 (proceedings before the investigation committee, interim orders panels, and fitness to practise panels) to that Act.

(7) A Health Board shall not be required under paragraph (2) to enter into a GMS contract with a person for whom it has in place–

(a) on 31st March 2004, temporary arrangements under regulation 24(7) of the 1995 Regulations; or

(b) contractual arrangements under article 15 which replace such temporary arrangements,

for so long as those arrangements continue, unless it is satisfied that, at the time the contract is to be signed, that person is able to provide (but not perform) services under the contract.

(8) Whenever a Health Board is considering refusing to enter into a GMS contract under paragraph (4) or (7), it shall consult the area medical committee (if any) before making its decision and, in a case where it is considering refusal under paragraph (7), it shall have regard to any written report made to it by the area medical committee (if any) under regulation 24(11) of the 1995 Regulations(**23**).

(9) Where a Health Board refuses to enter into a GMS contract pursuant to paragraph (4) or (7) it shall notify the prospective contractor in writing of its decision, its reasons for that decision and of the prospective contractor's right of appeal under article 5.

Entitlement to a GMS contract as a partnership

4.—(1) This paragraph applies to a partnership where, on 31st March 2004, all the partners in that partnership are–

(a) included in the medical list of the Health Board by virtue of regulation 4(1)(a) of the 1995 Regulations, and

(b) practising as partners in that partnership.

(2) Subject to paragraphs (4) and (7) and articles 6 and 12, a partnership to which paragraph (1) applies shall, on and after lst April 2004, be entitled to enter into a GMS contract with that Health

(**19**) Section 36A was inserted by the Medical (Professional Performance) Act 1995 (c. 51), section 1 and amended by S.I. 2000/1803; section 38(1) was amended by paragraph 7 of the Schedule to that Act; paragraph 5A was inserted by paragraph 20 of the Schedule to that Act. All three provisions are prospectively substituted by S.I. 2002/3135.
(**20**) Section 37 was amended by the Medical (Professional Performance) Act 1995 (c. 51), Schedule, paragraph 6(2) to (4). It is prospectively substituted by S.I. 2002/3135.
(**21**) Section 41A was inserted by S.I. 2000/1803. It is prospectively substituted by S.I. 2002/3135.
(**22**) S.I. 2002/3135. This Order substitutes the sections referred to in article 3(5).
(**23**) Regulation 24(11) was amended by S.I. 1995/3199, 1998, 660 and S.S.I. 1999/54.